
Local Government Committee

SSB 5145

Brief Description: Clarifying existing requirements for conservation of agricultural lands.

Sponsors: Senators Haugen and Rasmussen.

Brief Summary of Bill

- Authorizes counties to permit wetland mitigation banking projects on agricultural lands of long-term commercial significance if the local government has adopted criteria developed by the Department of Community, Trade, and Economic Development (DCTED) for evaluating these projects.
- Requires the DCTED to develop and adopt by rule criteria that counties may use to decide whether and how to evaluate proposals for mitigation banks on agricultural lands of long-term commercial significance.
- Requires the DCTED to provide a written report on the recommended criteria to the Chief Clerk of the House of Representatives and the Secretary of the Senate by January 1, 2008.
- Amends the natural resource industries goal of the GMA to specify that one aspect of the goal is to prevent new incompatible uses on designated agricultural lands of long-term commercial significance unless allowed under certain provisions of the GMA.

Hearing Date:

Staff: Ethan Moreno (786-7386).

Background:

Wetlands Mitigation Banking

Legislation enacted in 1998 established provisions pertaining to wetlands mitigation banks. The terms "wetlands mitigation bank" or "bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. The legislation, in

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

part, established criteria that must be met before the Department of Ecology (DOE) may approve the use of credits from a mitigation bank, and specified that the DOE may only certify those banks that comply with applicable statutory requirements.

The legislation also directed the DOE, through a collaborative process, to adopt rules pertaining to wetlands mitigation banks. The rules must satisfy specific requirements, including incorporating provisions for the:

- Certification, operation, and monitoring of wetlands mitigation banks;
- Coordination of governmental agencies; and
- Long-term management, financial assurances, and remediation for certified banks.

Although the DOE has not adopted a final wetlands mitigation banks rule, a draft rule has been developed and published by the agency.

Growth Management Act - General Provisions and Goals

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The Department of Community, Trade, and Economic Development (DCTED) is charged with providing technical and financial assistance to jurisdictions implementing the GMA.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that implement and conform with the comprehensive plan.

The GMA establishes a list of planning goals that are to be used exclusively for guiding the development and adoption of comprehensive plans and development regulations. Examples of the topics addressed by the planning goals include:

- *Urban growth* - encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- *Reduce sprawl* - reduce the inappropriate conversion of undeveloped land into sprawling, low-density development; and
- *Natural resource industries* - maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

Although the planning goals are not listed in an order of priority, in 2000, the Washington Supreme Court held in *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543 (2000) that "...the verbs of the agricultural provisions [of the planning goals] mandate specific, direct action."

The GMA requires all jurisdictions to satisfy specific designation mandates for natural resource lands and critical areas. All local governments, for example, must designate, where appropriate, agricultural lands, a term defined by statute, that are not characterized by urban growth that have long-term significance for the commercial production of food or other agricultural products. Planning jurisdictions have additional obligations for these lands and must also adopt development regulations that conserve them. All local governments must also adopt development regulations that protect critical areas.

Innovative Zoning Techniques and Accessory Uses for Agricultural Lands

The GMA authorizes counties and cities to use a variety of innovative zoning techniques (innovative zoning) in areas designated as agricultural lands of long-term commercial significance. The innovative zoning should be designed to conserve agricultural lands and encourage the agricultural economy. Generally, counties and cities should encourage nonagricultural uses to be limited to lands with poor soils or lands that are otherwise unsuitable for agricultural purposes.

Examples of innovative zoning a county or city may consider include the following:

- *Agricultural zoning*- zoning that limits the density of development and restricts or prohibits non-farm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production;
- *Cluster zoning*- zoning that allows new development on one portion of the land, leaving the remainder in agricultural or open space uses; and
- *Large lot zoning*- zoning that establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice.

Accessory uses allowed through innovative agricultural zoning provisions must comply with specific requirements prescribed in statute. Additionally, counties and cities may limit or exclude accessory uses in areas designated as agricultural lands of long-term commercial significance.

Summary of Bill:

Wetland Mitigation Banking Projects

Wetland mitigation banking projects may be permitted by a county through conditional or special use authorizations on agricultural lands of long-term commercial significance if the local government has adopted criteria established by the DCTED for evaluating these projects. Conservation projects that consist exclusively of planting vegetation or on-site mitigation projects required for permitted activities are authorized.

"Wetland mitigation banking project" is defined as any private or public project on a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

The DCTED must work with representatives from the Department of Agriculture, the DOE, county governments, and interested stakeholders to develop, and adopt by rule, the permitting criteria that counties may use to decide whether and how to evaluate proposals for mitigation banks on agricultural lands of long-term commercial significance. The criteria must reflect the priority expressed in the GMA for preserving agricultural lands of long-term commercial

significance, without entirely precluding the establishment of mitigation banks sites necessary to meet long-term mitigation objectives. The criteria must also minimize impacts on the continued agricultural use of agricultural lands of long-term commercial significance.

The DCTED must provide a written report on the recommended criteria to the Chief Clerk of the House of Representatives and the Secretary of the Senate by January 1, 2008.

Natural Resource Industries Goal

The natural resource industries goal of the GMA is amended to specify that one aspect of the goal is to prevent new incompatible uses on designated agricultural lands of long-term commercial significance unless allowed under provisions of the GMA permitting innovative zoning techniques, accessory uses, and wetland mitigation banking projects.

Appropriation: None.

Fiscal Note: Requested on March 22, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.